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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION

WASHINGTON, DC 20510-6125

March 19, 1993

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The Honorable James Quello
 Acting Chairman
 Federal Communications Commission
 1919 M Street, N.W.
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Dear Chairman Quello:

We are concerned that the Commission's proposals to implement the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385) appear inconsistent with the statute. We are particularly concerned about the FCC's implementation of the rate regulation and access to programming provisions. These provisions are essential to the Act's goals of consumer protection and encouragement of competition. The need for the prompt adoption of rules consistent with the letter and spirit of the Act is highlighted by recent actions of cable operators, actions which are causing further harm to consumers and seemed aimed at circumventing the Cable Act.

In considering the 1992 Cable Act, Congress determined that it was necessary to reimpose cable rate regulation to remedy problems caused by the absence of competition. It is therefore imperative that the Commission devote the resources necessary to carry out the consumer protections mandated by law. When the 1992 Act is implemented, the prices that consumers pay for all tiers of cable service should be driven down to a reasonable level by full-scale competition or, until competition develops, through regulation. Similarly, prices for cable installation and all equipment that may be used to receive basic cable service (even if also used for other purposes) should be cost-based and provided on an unbundled basis.

It is essential to ensure that consumers pay no more for cable programming split into two tiers (e.g., limited basic and expanded basic) than they would pay for the same programming offered in a single basic tier. To achieve this goal, the Act authorizes the Commission to reduce rates when cable operators retier their services or when subscribers are subjected to unreasonable rates. Thus, although cable operators around the country have been raising rates and retiering in an apparent effort to evade the rate regulation

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We believe that the reasonable/not unreasonable rate test for basic tier and cable programming services makes clear our resolve to eliminate all the monopolistic excesses from cable operators' charges. This regulatory standard must be applied carefully to emulate competitive market pricing.

The Act's implementation schedule presents the Commission with a formidable task. However, the cable industry's persistence in raising rates to excessive levels during consideration and after enactment of the 1992 Act makes it imperative that the Commission act quickly to protect consumers from price gouging.

In addition to protecting consumers through rate regulation in the absence of competition, Congress determined that it was necessary to encourage the development of competition to cable. The Act's access to programming provisions are designed to promote a fair and competitive multichannel video marketplace. Congress determined that a competitive marketplace would help to make available diverse sources of information at affordable prices.

The FCC's Notice of Proposed Rulemaking on the access to programming provisions, however, seems to be inconsistent with the clear intent of Congress as expressed in the Act. The Notice seeks comments on a number of approaches and concepts which appear incompatible with the straightforward mandate given to the Commission by Congress.

Congress concluded that the cable television industry dominates the nation's video market and, through concentration and vertical integration, the industry has

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of the four specific exemptions set out in the statute itself. Under the Act, after a complainant makes its prima facie case, the burden of proof lies with the vertically integrated cable programmer or cable operator that is alleged to be in violation. The statute does not grant the Commission the discretion to choose any other method of analysis of price discrimination or the ability to shift the burden of proof to cable's potential competitors.

